

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

MICHAEL DEWAYNE WHALEY,)	
)	
Petitioner,)	
)	
v.)	
)	
COURT OF CRIMINAL APPEALS, <i>et al.</i> ,)	
)	
Respondents.)	Civil Action No. 3:18-CV-144-C-BH

**ORDER OF THE COURT ON RECOMMENDATION REGARDING
REQUEST TO PROCEED IN FORMA PAUPERIS ON APPEAL**

Considering the record in this case and the recommendation of the Magistrate Judge, the Court hereby finds and orders:

- () The request for leave to proceed *in forma pauperis* on appeal is GRANTED.
- (X) The request for leave to proceed *in forma pauperis* on appeal (doc. 18) is **DENIED** because the Court certifies pursuant to Fed. R. App. P. 24(a)(3) and 28 U.S.C. § 1915(a)(3) that the appeal is not taken in good faith. In support of this certification, the Court incorporates by reference the magistrate judge's findings, conclusions, and recommendation filed in this case on October 8, 2019 (doc. 44). Based on those findings, this Court finds that the appeal presents no legal points of arguable merit and is therefore frivolous. The request for leave to proceed *in forma pauperis* on appeal is also denied because the United States Court of Appeals for the Fifth Circuit has sanctioned the petitioner in the amount of \$450 and barred him from filing in the Fifth Circuit or any court subject to the Fifth Circuit's jurisdiction "any challenge to his conviction and sentence until the sanction is paid in full, unless he first obtains leave from the court in which he seeks to file his pleadings." *In re Whaley*, No. 20-10924 (5th Cir. Oct. 8, 2020).

(X) Although this Court has denied leave to proceed *in forma pauperis* on appeal, the petitioner may challenge the denial by filing a separate motion to proceed *in forma pauperis* on appeal with the Clerk of Court, U.S. Court of Appeals for the Fifth Circuit, within thirty days after service

of the notice required by Fed. R. App. P. 24(a)(4). *See* Fed. R. App. P. 24(a)(5).

SO ORDERED this 8th day of February, 2021.



SAM R. CUMMINGS
SENIOR UNITED STATES DISTRICT JUDGE